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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

NO. 80-1992

IN RE
ROGER BARTH,

Appellant,

- VS -

(MORGAN M. FINLEY, Circuit Clerk),

Appellee.

JURISDICTIONAL STATEMENT

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IN RE ROGER BARTH, - - - - - - Appellant,

- VS -

(MORGAN M. FINLEY, Circuit Clerk), - - - - - - - - - - Appellee.

QUESTION PRESENTED BY THE APPEAL

Whether an Illinois statutory scheme which prevents adult adoptees from having access to their birth and court records on the assumption that all birth parents wish to maintain anonymity is overbroad and therefore violates the right of the adult adoptee-appellant to the equal protection of the laws and to have access to important

information concerning himself.

PARTIES

The parties in interest in the Illinois Supreme Court are the Appellant, Roger Barth, and the Clerk of the Circuit Court, Morgan Finley.

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OPINION BELOW

The Opinion of the Supreme Court of Illinois is not yet reported. A copy of that Opinion is reproduced in the Appendix at pages 1 through 26. The Opinion of the Illinois Appellate Court, First District, is reported at 85 Il.App.3d 1064, 407 N.E. 2d 884 (1980). This Opinion appears in the Appendix at pages 27 through 64.

JURISDICTION

This is an appeal from an Opinion of the Illinois Supreme Court entered on 18 March 1981 which upheld the constitutionality of an Illinois statutory scheme denying adult adoptees access to their birth and court records. Jurisdiction is invoked pursuant to 28 U.S.C. 1257(2) and 2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment 1:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

United States Constitution, Amendment 14 §1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Ill. Rev. Stat. Ch. 4, §9.1-18 (1975):

"The word 'illegitimate' or the words 'born out of wedlock', or words importing such meaning, shall not be used in any adoption proceeding in any respect."

Ill. Rev. Stat. Ch. 40, par. 1522 (1977):

"Upon motion of any party of an adoption proceeding the court shall; or upon the court's own

motion the court may, order that the file relating to such proceeding shall be impounded by the clerk of the court and shall be opened for examination only upon specific order of the court, which order shall name the person or persons who are to be permitted to examine such file."

Ill. Rev. Stat. Ch. 111 1/2 §73-17 (1971):
The Vital Records Act

"(1) For a person born in this State, the State Registrar of Vital Records shall establish a new certificate of birth when he receives any of the following:

(a) A certificate of adoption as provided in Section 16 or a certified copy of the order of adoption together with the information necessary to identify the original certificate of birth and to establish the new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court ordering the adoption, the adoptive parents, or the adopted person.

(b) A certificate of adoption or a certified copy of the order of adoption entered in a court of competent jurisdiction of any other state or country declaring adopted a child born in the State of Illinois, together with the information necessary to identify the original certificate of birth and to establish the new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court ordering the adoption, the adoptive parents, or the adopted person.

(c) A request that a new certificate be established and such evidence as required by regulation proving that such person has been legitimatized, or that the circuit court has determined

the paternity of such a person.

(d) An affidavit by a physician that he has performed an operation on a person, and that by reason of the operation the sex designation on such person's birth record should be changed. The State Registrar of Vital Records may make any investigation or require any further information he deems necessary.

Each request for a new certificate of birth shall be accompanied by a fee of $5 and entitles the applicant to one certification or certified copy of the new certificate. If the request is for additional copies, it shall be accompanied by a fee of $2 for each additional certification or certified copy.

(2) When a new certificate of birth is established, the actual place and date of birth shall be shown; provided, in the case of adoption of a person born in this State by parents who were residents of this State at the time of the birth of the adopted person, the place of birth may be shown as the place of residence of the adoptive parents at the time of such person's birth, if specifically requested by them, and any new certificate of birth established prior to the effective date of this amendatory Act may be corrected accordingly if so requested by the adoptive parents or the adopted person when of legal age. The new certificate shall be substituted for the original certificate of birth:

(a) Thereafter, the original certificate and the evidence of adoption, paternity, legitimation, or sex change shall not be subject to inspection or certification except upon order of the circuit court or as provided by regulation.

(b) Upon receipt of notice of annulment of adoption, the original certificate of birth shall be restored to its place in the files, and the new certificate and evidence shall not be subject to inspection or certification except upon order of the circuit court.

(3) If no certificate of birth is on file for the person for whom a new certificate is to be established under this Section, a delayed record of birth shall be filed with the State Registrar of Vital Records as provided in Section 14 or Section 15 of this Act before a new certificate of birth is established, except that when the date and place of birth and parentage have been established in the adoption proceedings, a delayed record shall not be required.

(4) When a new certificate of birth is established by the State Registrar of Vital Records, all copies of the original certificate of birth in the custody of any custodian of permanent local records in this State shall be transmitted to the State Registrar of Vital Records as directed, and shall be sealed from inspection."

STATEMENT OF THE CASE

Since 1945 adoption records and original birth records have been sealed in Illinois. Ill. Rev. Stat. 1977, Chap. 40 § 1522. However, between 1945 and 1961 birth records were not sealed to adult adoptees. Ill. Rev. Stat., 1959, Chap. 111-1/2, § 48(a) 1. In 1961 the present statutory provisions which preclude adult adopted persons from viewing their birth records went into effect. Ill. Rev. Stat. 1961, Chap. 4 § 9.1-18; Chap. 111-1/2 §§ 73-17(2)(a), (4); In the Matter of Roger B., 85 Ill. App.3d 1064, 407 N.E.2d 884, 890 (1980), Ftnte. 7.

In 1960 the Presiding Judge of the County Division of the Circuit Court of Cook County entered a general order (pursuant to Chapter 40 § 1522) impounding all adoption files upon entry of a final adop-

tion decree. (Trial Court's Memorandum Opinion and Order, App.69).

The Appellant filed a Petition in the County Division of the Circuit Court of Cook County seeking access to his birth records arguing that adulthood was good cause. Alternatively he argued that the statute was unconstitutional if adulthood could not be read into good cause. At the hearing the Trial Court on 15 February 1979 entered a Memorandum Opinion and Order (App. pp. 65 through 83) denying Roger Barth's relief. This was affirmed by the Illinois Appellate Court (In the Matter of Roger B., Supra) with one Justice dissenting. (App. pp. 27 through 64). The Illinois Supreme Court affirmed that decision (Docket No. 53796) on 18 March 1981 (See App. pp. 1 through 26

At the hearing, the Appellant's adop-

tive mother testified of her support for him and his search efforts. (R 3-9). The position of the Appellant, Roger Barth, is best summarized by his testimony on cross-examination:

> "All right. Approximately three years ago, I began searching for a biological family. I have a family. I have a sister, I have a mother, and I had a father. That is my primary family. These are people who are related to me by blood -- the people that I am looking for are people who are related to me by blood. I know I have a mother, I presume I had a father, I might have brothers and sisters. I would like to have the opportunity to meet with these people, and perhaps find some identification with them. I by no means wish to replace my present family with them, or even put any burden -- any of my burden on them. I have a fairly satisfactory life. I am emotionally, physically, and financially comfortable. All I am seeking are people who are related to me whether the Court sees it that way or not. (R 23).
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>
> If I understand you, you are

> asking me if they, through some mediator to the Court, would say, whoever this child is that was given up for adoption twenty-nine years ago, I don't wish to see him, or have anything -- I have nothing to say to him whatever, on the basis of that, if that were their feelings, I would say yes, I would leave them alone, however, my (adoptive) mother who is in this courtroom told me that one year after my adoption, my mother, through the attorney who handled the adoption, asked about me, and I would tend to believe that would not be her reaction." (R 26).

The Appellant's sister (adopted also by his adoptive parents) testified about her own reunion. She stated that prior to the reunion she was never able to get along well with her adoptive mother, but afterwards their relationship improved. She discovered that she had eight biological brothers and sisters, several of whom she is presently close to. (R 40).

Edward Wrizk testified (R 43-57) that

he was the Director and Co-founder of the Washington Adoptees' Rights Movement and a Confidential Intermediary of the King County (Seattle, Washington) Superior Court. Mr. Wrizk testified that Judge Ackley of the King County Court set up a confidential intermediary system wherein intermediaries attempt to locate birth parents to determine if they want reunion with their adult siblings. Mr. Wrizk testified that Judge Ackley had appointed confidential intermediaries to make searches in eighty (80) cases and in sixty-six (66) of these the intermediaries were successful in finding birth parents. (R 46). Of the Sixty-six (66) birth parents contacted, sixty-five (65) consented to reunions. (R 46).

Donna Cullom testified (R 59-68) that she is the Founder and President of Yes-

terday's Children, a group of adult adoptees with a membership of approximately 12,000 (R 60). Approximately 60% of the membership are adult adoptees while the rest consist of birth parents, adoptive parents, and birth siblings. (R 60). Ms. Cullom testified that since the founding of the group in 1974, they have performed over 900 successful searches for birth relatives. (R 61). Ms. Cullom estimated that in only ten cases did the birth relative refuse reunions and in those cases the relatives were willing to give information to an intermediary. (R 62).

The Trial Court held that the records could only be opened upon a showing of good cause and adulthood was not good cause. The Court indicated that a showing of good cause would require a psychological or medical reason:

> "--the determination of 'good cause' involves the balancing of three variables: (1) the type of information sought, (2) the reason for seeking the information and (3) the risk of harm to other parties. In order to determine whether good cause has been shown it is necessary to determine these variables and balance them against each other. A showing of psychological need will not in all instances outweigh the risk of possible harm to others. A showing that little or no risk is present may mean that grave reasons for seeking information may suffice. A request for only a limited amount of information may overcome virtually all objections.--" (App.76,7)

Later the Trial Court pointed out "thus, while it is certainly inaccurate to characterize petitioner's feeling as 'simply' a desire to know, it is equally clear that the need for the information is not necessary for psychotherapeutic reasons to insure his functioning as a normal, well-adjusted human being." (App. 79). The

Illinois Supreme Court later also indicated that good cause would require a showing of medical necessity. "In this case, Plaintiff's attempt to have his adoption records released did not result from any physical or psychological medical need." (App.25).

The Trial Court went on to state that balanced against the Appellant's need and desire to review his records must be balanced the rights of other parties to the original adoption proceedings. (App. 83). Inasmuch as his only living adoptive parent, his mother, testified on behalf of the Appellant's search, the Court inferentially was referring to the birth parents. For these reasons the Trial Court refused to open the records.

THE QUESTIONS INVOLVED IN THIS APPEAL ARE SUBSTANTIAL.

INTRODUCTION

Since 1961 the Illinois statutory scheme has denied adult adoptees the right to review their adoption and birth records unless they can show medical and/or psychiatric reasons. This almost total prohibition is premised on the rather fragile theory that alleged privacy rights of birth parents must be protected. However, no effort is ever made, either at the time of adoption or thereafter, to determine if birth parents really desire this "privacy". Indeed, as is pointed out below, (see pp.18,19) recent studies and the unrebutted testimony at the hearing below indicate that the vast majority of birth parents favor the opening of adoption records and a reunion with their birth children. In the present case, for

instance, Roger Barth testified as to the reasons why he wished to review his birth and adoption records. A second member to the adoption, his only living adoptive parent, his mother, convincingly testified in support of his search (R 3-9). The Court refused to open the records despite the fact that no effort was made to determine the views of the birth parents who may have been searching for the Appellant without success for years. Indeed, his birth mother made inquiries of the Appellant a year after giving him up (R 26).

The present statutory scheme is therefore over broad inasmuch as, unless a Petitioner can show good medical reasons, it simply denies the adult adoptee access to the birth records because it presumes that all birth parents desire privacy from their natural children.

This Court should grant the appeal because of the novelty and importance of the constitutional questions present - that is, whether the present Illinois statutory scheme is an overly broad attempt to protect the privacy of those individuals* who may not wish to exercise the rights but, quite the contrary, may desire the reunion as much or more than the adopted adult, and whether the right of the adult adoptee to have access to information about himself is a fundamental constitutional right protected by the First, Ninth and Fourteenth Amendments.

* Of course, as was pointed out eloquently by Roger Barth's adopted sister, more than birth parents are involved. Many adopted children have brothers, sisters, cousins, grandparents, all of whom may desire to have a reunion with the adult adoptee.

1. The Present Illinois Statutory Scheme Is Arbitrary And Bears No Rational Relationship To A Legitimate State Objective.*

Assuming there is no fundamental right involved and that the classification is not suspect then the Illinois statutory scheme will be upheld if it is not arbitrary and there is a rational relationship to a legitimate State objective. Village

* The Appellant contends that there is a fundamental right involved and hence the State must show a compelling interest. In Point 2 below the Appellant contends that he has a constitutional right to receive information which is fundamental. Therefore, this constitutional right would, per force, insure that for equal protection analysis the State must show a compelling state interest as well. Nevertheless, it is the Appellant's position that the State cannot show even a rational relationship between the reasons set forth and the state interest involved and hence for purposes of the Jurisdictional Statement discusses only this point.

of Belle Terre v. Boraas, (416 U.S. 1, 8 (1974)). The Illinois Supreme Court advanced three reasons for the claimed rational basis. As is pointed out below the second (protecting adoptive parents) is not relevant here and the third (insuring the integrity of the adoption process) is really part of the first reason (privacy rights of birth parents).

(a) Protection of Birth Parents

The clearest indication that the Illinois statutory scheme is overly broad is that the main reliance by the state courts for upholding this scheme is that it is to protect the birth parents despite the fact that there is no evidence that, in particular, Roger Barth's birth parents wished to be protected or, in general, that birth parents wish protection. At the hearing below, Edward Wrizk testified

that he was a sworn Confidential Intermediary set up by the King County (Seattle, Washington) Superior Court. The King County Court has arranged a system wherein an intermediary searches for birth parents of a petitioning adult adoptee to make a determination whether the birth parents wish a reunion with the adult adoptee. Mr. Wrizk's testimony was that out of the 80 searches, 66 birth parents were found and of these 66, 65 wished a reunion. (R 45-47). Donna Cullom, the President of an organization of adult adoptees, testified that her group had informally and without court sanction conducted over 900 successful searches for birth relatives (R 61) and in only about 10 cases did the birth relative refuse the reunion. (R 62). This testimony is also supported by research. In one study (Sorosky, et al., "The Effects Of The Sealed Records In Adoption," 133

Am. J. Psychiatry 900 (1976)) 50 cases of adoptees who had reunited with their birth parents were studied. Of these, 41 (82%) natural parents reacted positively to the reunion compared to only 5 (10%) who displayed adverse reactions.

Of course, the Court does not have to rely upon statistics and testimony to realize that many birth parents are compelled to give up their children under cimcumstances beyond their control. Youthfulness, poverty, desertion all can play an important role in forcing a parent to give up his or her child. The fact that the parent is compelled to surrender the child does not mean that the parent loses interest in or love for his or her child. Indeed, this Court can take judicial notice of the fact that human nature is to the contrary. While it is conceiv-

able that some parents (one in the Seattle, Washington group, 5 in the Sorosky study and approximately 10 in the Yesterday's Children's informal sampling) may not desire reunion, a statute that prevents any opportunity to review birth records (and hence obtain a reunion under most circumstances) based on the fact that a small percentage (or any percentage) of birth parents may object is simply over broad. If, indeed, the statute is to protect those birth parents who wish to exercise a right of privacy there are simpler, less constraining methods of drawing or interpreting such a statute. The King County Confidential Intermediary Provision is one in which a Court apparently has read adulthood into good cause and set up precautions to protect those parties who wish to maintain privacy. A second method

would be to set a registry. If a birth parent wished a reunion, he or she could simply register with the Secretary of State under a code name. An adult adoptee could check with the Secretary of State or the Court for a determination if the birth parent desired the reunion. Moreover, rather than the present system which under most circumstances precludes the birth parents from the courtroom itself during the adoption, a judge could inform a birth parent of his or her right to file a notice with the court at any time so that the birth child could get in touch with the natural parent if he or she wished.

This Court has sparingly applied the overbreadth doctrine. "Facial overbreadth has not been invoked when a limiting construction has been or could be placed on the challenged statutes." Broadrick v.

Oklahoma, 413 U.S. 601, 613 (1973) (Citations omitted). In the instant case the Illinois Courts have refused to place a limiting construction on a statutory scheme which condones the sealing of important information to protect the rights of those who may wish not to have privacy and who have no avenue of presenting their views.*

In Bellotti v. Baird, 433 U.S. 622 (1979) this Court struck down a Massachusetts statute requiring parental or judicial consent before an abortion could be performed on any unmarried minor. The

* While the overbreadth doctrine generally has been applied to First Amendment cases (and, as such, would be applicable to Appellant's First Amendment discussion in Point 2 below), it has also been used in equal protection analysis. Eisenstadt v. Baird, 405 U.S. 438 (1973); Buckley v. Valeo, 424 U.S. 1 (1976).

statute was deemed too broad (as interpreted by the Massachusetts Supreme Court) inasmuch as it required judicial or parental consent in every case without regard to the maturity of the minor. 443 U.S. 651 and 653-6. Similarly in the present case the law is premised on the assumed privacy rights of a whole class of individuals, many and even most of whom may have absolutely no desire for the privacy.

While the Appellant's major argument is that the statute is overbroad by including both those parents who would wish that the children have the information with those parents who do not so wish, there is also a question as to whether it is even reasonable that a birth parent have State sanctioned authority to contract away rights an infant may wish to exercise 18 years after the adoption. As Mr.

Justice Rizzi of the Illinois Appellate Court pointed out in his dissent, there is no attempt to seal other records which might be equally embarassing or damaging as against the person involved, such as a divorce or annulment matters which are often described in published court opinions - 407 N.E.2d at 891; (App.53).

(b) The Protection of Adoptive Parents

Again this argument demonstrates overbreadth. In the present case the only living adoptive parent of the Appellant testified in favor of his search (R 3-9). Of course, the Appellant being an adult would seem to have the right regardless of the feelings of his adoptive parents. Once a child becomes an adult, he or she can change his religion, disown his parents, leave home or become involved in a variety

of acts which will interfer with the wishes of his or her parents and integrated family unit.

(c) Integrity of the Adoption Process

According to this argument (App.14), the continued existence of adoption is a human solution to the serious social problem of children who may become unwanted, abused or neglected. "--The public has an interest in assuring that changes in law, policy or practice will not be made which negatively effect the supply of capable adoptive parents or the willingness of biological parents to make decisions which are best for them and their children."

There is no evidence that confidentiality encourages the surrender of children for adoption. Indeed, in Illinois, prior to 1961 when there was no confiden-

tiality vis-a-vis the adopted adult, there seems to have been no problem. As Mr. Justice Rizzi pointed out in his dissenting opinion in the instant case, there were 3,345 adoptions in Cook County in 1960 and in 1978 after records had been sealed from adult adoptees for 17 years, there were only 2,089 adoptions. (407 N.E.2d at 890). Nor, of course, may the State claim a legitimate interest in encouraging women to give up their children for adoption. Roe v. Wade, 410 U.S. 113, 155 (1973). There is no rational reason to believe that individuals who would place the child up for adoption would not if the adoptee might have access to his or her

records in 18 years.* Prior to 1961 in Illinois there was no problem. Three states now, Alabama, Florida, and Kansas, along with such countries as Great Britain, Finland, and Israel have open records with no discernable problems. See In the Matter of Roger B., 407 N.E.2d at 891, Ftnte. 10; (App. 56).

* This is in reality, the same argument as "the protection of Birth Parent Argument discussed in A above. As such the same overbreath problems are inherent. As previously argued there are a variety of ways to protect those birth parents who do desire privacy.

The present Illinois statutory scheme then violates the equal protection clause inasmuch as the overly broad scheme simply assumes that every birth parent wishes privacy and based upon this denies the adult adoptees access to his or her records absent a showing of medical and/or psychiatric necessity. The purported reasons behind the statutory scheme simply bear no rational relationship to the purported State objectives.

2. The Challenged Statutory Scheme Is Unconstitutional Because It Allows The Sanctioned Sealing Of Important Biological And Familial Information From The Adult Adoptee Without A Correlative And Compelling State Purpose.

The right to seek out and obtain information irrespective of whether such information is of a personal or societal benefit has found protection within the

right of personal privacy, Carey v. Population Services, 431 U.S. 678 (1977) and in the First Amendment right to seek out information. Stanley v. Georgia, 394 U.S. 577 (1969); Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975); Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 390 (1969). In Griswold v. Connecticut, 381 U.S. 479 (1964), Mr. Justice Douglas, writing the Court's Opinion, pointed out that the right of freedom of speech and press, "...includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read (Citations) and freedom of inquiry, freedom of throught and freedom to teach (Citations)..." Griswold v. Connecticut, 381 U.S. 479, 482 (1964). See Generally, Haeman, Speech and Privacy, Is There A Right Not To Be Spoken To? 67 N.W.L. Rev.

153 (1972) and Note, The Adult Adoptee's Right To Know His Natural Heritage, 19 N.Y. L.F. 136 (1973); The Adult Adoptee's Constitutional Right To Know His Origins, 48 S. Cal. L. Rev. 1196, 1204-1210 (1975).

The Court has held that the right to seek out and receive information overcomes the State's interest in preventing the publishing of the name of a raped woman in the news media; Cox Broadcasting v. Cohn, 420 U.S. 469 (1975); overcomes the right of the State to prevent the showing of nude films in an outdoor theater; Erznoznik v. City of Jacksonville, 422 U.S. 205 (1975); overcomes the right of the State to prevent door-to-door solicitation (of religious organizations); Schneider v. New Jersey, 308 U.S. 147 (1939) and overcomes the right of the State to prevent advertising of contraceptives, Carey v. Population Services, Supra.

As Mr. Justice Rizzi of the Illinois Appellate Court pointed out in his dissenting opinion:

> "The fact that we are dealing here with a fundamental right is illustrated by the questions we all have about ourselves. What are the physical characteristics to which my children may be genetically prone? What is my ancestral nationality or religious persuasion? What sufferings or endurances are in my roots? What achievements or feats can I point to with ancestral pride? Can anyone seriously deny that one's liberty to pursue these and similar questions is 'so rooted' in the traditions and conscience of our peoples' as to be ranked as fundamental'?" (Citing Griswold, 381 U.S. at 493)--
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>
> Moreover, a comparison of this right with rights that have been held to be fundamental supports the conclusion that this is a fundamental right. Examples of rights which have been held to be fundamental include a woman's right to terminate her pregnancy (Citing Roe v. Wade, 410 U.S. 113 (1973)), matters regarding procreation (Citing Skinner v. Oklahoma, 316 U.S.

> 535 (1942)), activities relating to marriage, (Citing Loving v. Virginia, 388 U.S. 1 (1967)), matters involving contraception (Citing Eisensteadt v. Baird, 405 U.S. 438 (1972)), matters of family relationship (Citing Price v. Massachusetts, 321 U.S. 158 (1944)), and child reading and education (Citing Pierce v. Society of Sisters, 268 U.S. 390 (1923)). The common element which ties these protected rights together is that they involve a private choice about one's personal life to be made by each individual without governmental interference. An adult's right to decide whether he wants to know the identify of his genetic parents is a right that is part of the same strain and contains the same common element.--" 407 N.E.2d at 869; App.47,8.

The past decade has spawned a proliferation of literature concerning the adoptee's psychological need to investigate his or her natural heritage and to obtain knowledge concerning his or her origins. Though this need remains elusive to those who have not suffered its burden, its

existence and effects have been recognized and well documented by social scientists, e.g. J. Triselotis, In Search Of Origins: The Experiences Of Adopted Children (1973); Ms. Kornitzer, Adoption And Family Life (1960); A. McWhinnie, Adopted Children - How They Grow Up (1967); Sorosky, et al., The Effects Of the Sealed Records In Adoption, 133 Am. J. Psychiatry 900 (1976); Committee on Adoption, American Academy of Pediatrics, Identity Development In Adopted Children, 47 Pediatrics 948 (1971); Cominos, Minimizing The Risk Of Adoption Through Knowledge, 16 Social Work, 78 (1971); Baran, Sorosky, and Pannor, "The Dilemma Of Our Adoptees", Psychology Today, December, 1975, 38.

The overwhelming consensus of research and commentary is that adoptees face greater difficulty with social and psycho-

gical adjustment than non-adoptees, and this difficulty often stems directly from the adopted person's lack of feeling of continuity with his or her past. Triselotis, Supra, at p. 160.

Quite often it is much more than the right to know one's identify or the identity of one's parents that is at stake. The Appellant's sister who also was adopted testified that she was able to have reunions not only with her birth parents but also with her eight biological brothers and sisters and that she became close to all of them, particularly with a sister who is her best friend. Recently, the front pages of the major newspapers carried a story concerning triplets who were separated at birth and adopted into three separate foster homes.

Even in an area as personal as the

home, the Court has held that where sensitive and important counterveiling rights are concerned, the right of privacy of the householder must give way. Hence, in Schneider v. New Jersey, 308 U.S. 147 (1939), the Court held unconstitutional an ordinance preventing door-to-door solicitation by a religious group. Cf. Rowan v. U.S. Post Office, 397 U.S. 728 (1970); Breard v. Alexandria, 341 U.S. 622 (1951) (rights of householders deemed superior over individuals engaged in commercial enterprises).

CONCLUSION

Inasmuch as the questions presented have never before been considered by this Court and inasmuch as the constitutional issues presented are substantial, the Appellant respectfully asks that this Court grant plenary consideration of the matter with

Briefs on the merits and oral argument.

Respectfully submitted,

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80-1992

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

NO. _____

IN RE
ROGER BARTH,

Appellant,

- VS -

(MORGAN M. FINLEY, Circuit Clerk),

Appellee.

APPENDICES

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OPINION

OF THE

SUPREME COURT OF ILLINOIS

Docket No. 53796-Agenda 41-January 1981.

In Re ROGER B., Appellant (Morgan M. Finley, Circuit Clerk, Appellee).

MR. JUSTICE MORAN delivered the opinion of the court:

The Circuit Court of Cook County dismissed the amended petition of plaintiff, Roger B., which sought a judgment declaring Section 18 of the Adoption Act (Section) (Ill. Rev. Stat., 1977 Ch. 40, Par. 1522) unconstitutional. That statute places adoption records and original birth records under seal. The appellate court, in a two-to-one decision, affirmed. 85 Ill. App. 3d 1064.

Plaintiff argues before this court that the Section is invalid in that it (1) infringes upon a fundamental right, (2) creates a suspect classification, in violation of the equal protection clause of the United States Constitution, and (3) vio-

lates plaintiff's right to receive information.

The facts are uncontradicted. Plaintiff, who was born in 1949, filed an amended petition in the circuit court, asserting that his status as an adult adoptee who had feelings of inadequacy and uncertainty as to his background permitted access to his adoption records. Alternatively, plaintiff alleged that the Section is unconstitutional. At the hearing, plaintiff testified that he had been searching for his biological family for three years. Plaintiff regarded himself as "emotionally, physically, and financially comfortable." He testified that his search was not based on any psychiatric or medical need. Rather, the search emanated from plaintiff's desire to know "information which pertains to [him] as a person." The trial court

upheld the validity of the statute. It also found that the statute requires a showing of good cause, which plaintiff failed to establish. The appellate court affirmed, upholding the constitutionality of tne Section. The court also held that adulthood, in and of itself, does not constitute good cause to allow access to sealed adoption records.

The Section provides in pertinent part:

> "Upon motion of any party to an adoption proceeding the court shall, or upon the court's own motion the court may, order that the file relating to such proceeding shall be impounded by the clerk of the court and shall be opened for examination only upon specific order of the court, which order shall name the person or persons who are to be permitted to examine such file." (Ill. Rev. Stat. 1977, Ch. 40, Par. 1522).

A companion statute, sections 17(2)(a) and 17(4) of the Vital Records Act (Ill. Rev. Stat. 1977, Ch. 111 1/2 Par. 73-17), pro-

vides that, after an adoption, the original birth certificate shall be sealed from inspection except upon court order.

Neither party disputes the trial court's finding that the statutory scheme allows the records to be unsealed upon a showing of good cause. The statute, unlike those of several other States (e.g., New York Dom. Rel Law sec. 114 (McKinney 1977)), does not explicitly provide a good-cause standard. However, the legislature has given the court authority to issue an order providing access to the records. Although we find no Illinois cases interpreting the standard to be applied, we agree that the discretion conferred by the statute was intended to be exercised upon a showing of good cause.

Plaintiff contends that the right to know his own identity is a fundamental

right. He argues that the Section infringes upon this right without serving a compelling State interest, thereby violating the equal protection clause of the Federal Constitution. Plaintiff maintains that the right to determine one's natural identity finds its basis under one's right to privacy. He relies on several Supreme Court cases involving familial relationships, rights of family privacy, and freedom to marry and reproduce: Roe v. Wade (1973), 410 U.S. 113, 35 L. Ed2d 147, 93 S. Ct. 705 (woman's right to terminate her pregnancy); Eisenstadt v. Baird (1972), 405 U.S. 438, 31 L. Ed. 2d 349, 92 S. Ct. 1029 (matters involving contraception); Loving v. Virginia (1967), 338 U.S. 1, 18 L. Ed.2d 1010, 87 S. Ct. 1817 (freedom to marry); Prince v. Massachusetts (1944), 321 U.S. 158, 88 L. Ed. 645, 64 S. Ct. 438

(matters involving child rearing); Skinner v. Oklahoma ex rel. Williamson (1942), 316 U.S. 535, 86 L. Ed. 1655, 62 S. Ct. 1110 (the right to procreate).

These cases concern the most intimate areas of personal and marital privacy. The Supreme Court has been very hesitant in expanding the list of fundamental rights. (San Antonio Independent School District v. Rodriguez (1973), 411 U.S. 1, 29-33, 36 L. Ed.2d 16, 40-43, 93 S. Ct. 1278, 1294-97.) In San Antonio, the Supreme Court, holding that the right to education is not a fundamental right, state, "It is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws. (411 U.S. 1, 33, 36 L. Ed.2d 16, 43, 93 S. Ct. 1278, 1297.) The court indicated that the key to discovery if a right is

fundamental "lies in assessing whether there is a right [that is] explicitly or implicitly guaranteed by the Constitution." (411 U.S. 1, 33-34, 36 L. Ed.2d 16, 43, 93 S. Ct. 1278, 1297; see Dandridge v. Williams (1970), 397 U.S. 471, 485, 25 L. Ed. 2d 491, 502, 90 S. Ct. 1153, 1161 (the recognition of the fact that the administration of public welfare assistance involves the most basic economic needs of improverished human beings did not render it a fundamental right). We have found no case holding that the right of an adoptee to determine his genealogical origin is explicitly or implicitly guaranteed by the Constitution. Several courts, however, have found that the right asserted here is not a fundamental right. Alma Society, Inc. v. Mellon (2d Cir. 1979), 601 F2d 1225, 1231-33; Application of Maples (Mo.

1978), 563 S.W.2d 760, 763-64; Mills v. Atlantic City Department of Vital Statistics (1977), 148 N.J. Super. 302, 311-12, 372 A.2d 646, 651; In re Sage (1978), 21 Wash, App. 803, 806-07, 586 P.2d 1201, 1203.

Virtually every State statute affects important rights. (San Antonio Independent School District v. Rodriguez (1973), 411 U.S. 1, 31, 36 L. Ed.2d 16, 41 93 S. Ct. 1278, 1295.) Although information regarding one's background, heritage, and heredity is important to one's identity, it does not fall within any heretofore delineated zone of privacy implicitly protected within the Bill of Rights. We believe the adoptee does not have a fundamental right to examine his adoption records.

Inasmuch as a fundamental right is not involved, the statute will be upheld if it

is not arbitrary and bears a rational relationship to a legitimate State objective. Village of Belle Terre v. Boraas (1974), 416 U.S. 1, 8, 39 L. Ed.2d 797, 803, 94 S. Ct. 1536, 1540; San Antonio Independent School District v. Rodriguez (1973), 411 U.S. 1, 17, 36 L. Ed.2d 16, 33, 93 S. Ct. 1278, 1288; Illinois Housing Development Authority v. VanMeter (1980), 82 Ill.2d 116, 120.

Section 18 and its related statutes represent a considered legislative judgment that confidentiality promotes the integrity of the adoption process. Confidentiality is needed to protect the right to privacy of the natural parent. The natural parents, having determined it is in the best interest of themselves and the child, have placed the child for adoption. This process is done not merely with the expectation of

anonymity, but also with the statutory assurance that his or her identity as the child's parent will be shielded from public disclosure. Quite conceivably, the natural parents have established a new family unit with the expection of confidentiality concerning the adoption that occurred several years earlier. Application of Maples (Mo. 1978), 563 S.W.2d 760, 763; In re Sage 1978), 21 Wash. App. 803, 806, 586 P2d 1201, 1203; Mills v. Atlantic City Department of Vital Statistics (1977), 1-18 N.J. Super. 302, 311, 372 A.2d 646, 651. See In re Christine (1979), ____R.I. _____, ____, 397 A2d 511, 513. In Application of Maples, the Missouri Supreme Court stated:

> "[T]he state at the behest of those concerned undertook through the adoption process to sever the parental relationship, award custody and establish a new relationship of parent and child. Much of the information coming into the court's records during

> that process is for good reason treated as a confidence, offering a fresh start to the parties so that natural parents making this agonizing decision are assured the parent-child relationship will be completely severed, both legally and socially and may put behind the mistakes and misfortunes precipitating this fateful act. They are assisted in this traumatic experience by the knowledge that the records may be compromised only on order of court and that neither the child nor the adoptive parents may question why they consented to the adoption or the circumstances of the abandonment or neglect. If it were otherwise, the adopted child might reenter their lives with disastrous result. There must be finality for the natural parents and a new beginning; if there is a right of privacy not to be lightly infringed, it would seem to be theirs."
> 563 S.W.2d 760, 763.

These interests of the natural parents do not cease when the adoptee reaches adulthood. Alma Society, Inc. v. Mellon (2d Cir. 1979). 601 F2d 1225, 1236; Mills v. Atlantic City Department of Vital Statistics (1977), 148 N.J. Super, 302, 316, 372 A2d 653; In Stanley v. Georgia (1969), 394

U.S. 557, 564, 22 L. Ed.2d 542, 549, 89 S. Ct. 1243, 1248, the Supreme Court held that "'***the right to be let alone [is] the most comprehensive of rights and the right most valued by civilized man.' [Citations]"

Confidentiality almost must be promoted to protect the right of the adopting parents. The adopting parents have taken into their home a child whom they will regard as their own and whom they will love, support, and raise as an integral part of the family unit. They should be given the opporunity to create a stable family relationship free from unnecessary intrusion. (In re Christine (1979), ___ R.I. _____, _____, 397 A2d 511, 513; In re Sage (1978) 21 Wash. App. 803, 806, 586 P2d 1203; Mills v. Atlantic City Department of Vital Statistics (1977), 148 N.J. Super, 302, 307-08,

372 A2d 646, 649; In re Adoption of Spinks (1977), 32 N.C. App. 422, 427, 232 S.E.2d 479, 483.) The Section creates a situation in which the emotional attachments are directed toward the relationship with the new parents. The adoptive parents need and deserve the child's loyalty as they grow older, and particularly in their later years. Application of Maples, 563 S.W.2d 760, 764. As stated in Alma Society:

> "The adoptee's attainment of majority is a definite event in the adoptee's life; but it occurs independent of either the legally terminated natural family relation or the legally assumed adoptive one and does not affect termination or continuation of those relationships." 601 F2d 1225, 1231.

The State's concern of promoting confidentiality to protect the integrity of the adoption process is well expressed by the following excerpt from Klibanoff, Genealogical Information in Adoption: The Adop-

tees Quest and the Law, 11 Fam. L.Q. 185, 196-97 (1977);

> "The primary interest of the public is to preserve the integrity of the adoptive process. That is, the contined existence of adoption as a humane solution to the serious social problem of children who are or may become unwanted, abused or neglected. In order to maintain it, the public has an interest in assuring that changes in law, policy or practice will not be made which negatively affect the supply of capable adoptive parents or the willingness of biological parents to make decisions which are best for them and their children. We should not increase the risk of neglect to any child, nor should we force parents to resort to the black market in order to surrender children they can't care for.
>
> ***
>
> No one has yet shown that decades of policy protecting the anonymity of the biological parents and the security from intrusion of the parent-child relationship after adoption have been misguided. Quite the contrary. The overwhelming success of adoption as an institution which has provided millions of children with

families, and vice versa, cannot be easily attacked.

The public has a strong interest, too, in preserving the confidential non-public nature of the process. Public attitudes toward illegitimacy and parents who neglect or abuse children have not changed sufficiently to warrant careless disclosure of the circumstances leading to adoption.

But the public also has an interest in the mantal health of children who have been adopted - in order that they not become burdens to society. Some provision for the relatively small group of adoptees whose psychological needs are compelling would appear necessary."

We note that only three States, Alabama, Florida and Kansas, grant the adoptee access to original birth records. Confidentiality is perceived to promote the efficacy of the adoption process in 42 States, where the statutes provide for sealed birth records. Alma Society, Inc. v. Mellon (2d Cir. 1979), 601 F2d 1225, 1235.

The State certainly must protect the interest of the adoptee, as well as the rights of the natural and adopting parents. When the adoptee is a minor, there is no dispute that the sealed-record provisions serve this end. The child, in his new family environment, is insulated from intrusion from the natural parents. The child is protected from any stigma resulting from illegitimacy, neglect, or abuse. The preclusion of outside interference allows the adopted child to develop a relationship of love and conhesiveness with the new family unit. Prior to adulthood, the adoptee's interest is consistent with that of the adopting and natural parents.

Upon reaching majority, the adoptee often develops a countervailing interest that is in direct conflict with the other parties, particularly the natural parents.

The adoptee wishes to determine his natural identity, while the privacy interest of the natural parents remains, perhaps stronger than ever. The Section recognizes that the right of privacy is not absolute. It allows the court to evaluate the needs of the adoptee as well as the nature of the relationships and choices made by all parties concerned. The statute, by providing for release of adoption records only upon issuance of a court order, does no more than allow the court to balance the interests of all the parties and make a determination based on the facts and circumstances of each individual case.

We find the statute to be rationally related to the legitimate legislative purpose of protecting the adoption process. Consequently, the Section does not unconstitutionally infringe upon an adoptee's

right to discover his own identify.

Plaintiff argues that the Section creates a suspect classification for which there is no compelling State justification, thereby violating the equal protection clause of the Constitution. He compares his classification as an adoptee to legislative classifications that have been held suspect, such as race (Loving v. Virginia (1967), 388 U.S. 1, 18 L. Ed.2d 1010, 87 S. Ct. 1817), alienage (Graham v. Richardson (1971), 403 U.S. 365, 29 L. Ed.2d 534, 91 S. Ct. 1848), national origin (Korematsu v. United States (1944), 323 U.S. 214, 89 L. Ed. 194, 65 S. Ct. 193), and classifications that have been analyzed as "quasi-suspect," such as illegitimacy (Trimble v. Gordon (1977), 430 U.S. 762, 52 L. Ed.2d 31, 97 S. Ct. 1459) and sex (Frontiero v. Richardson (1973), 411 U.S. 677, 36 L. Ed.

2d 583, 93 S. Ct. 1764). Only race, alienage, and national origin have been definitely recognized as suspect classifications. Just as is true with respect to fundamental rights, the Supreme Court has been very hesitant in expending the list of suspect classifications. See San Antonio Independent School District v. Rodriguez (1973), 411 U.S. 1, 28, 36 L. Ed.2d 16, 40, 93 S. Ct. 1278, 1294; Kahn v. Shevin (1974), 416 U.S. 351, 355-56, 40 L. Ed.2d 189, 193, 94 S. Ct. 1734, 1737. See also Alma Society, Inc. v. Mellon (2d Cir. 1979) 601 F2d 1225, 1234; In re Estate of Karas (1975), 61 I11.2d 40, 50-51.

Again, the Supreme Court has not enunciated specific criteria by which a suspect class is determined, but has suggested that suspect classes are those that suffer from "an immutable characteristic deter-

mined solely by the accident of birth: and have had a history of the relegation of the class to an inferior status. Frontiero v. Richardson (1973), 411 U.S. 677, 684-86, 36 L.Ed.2d 583, 590-91, 93 S. Ct. 1764, 1769-70.

The status of adoptee does not result at birth, it is derived from a legal proceeding, the purpose of which is to protect the best interest of the child. (Ill. Rev. Stat. 1977, Ch. 40, Par. 1525.) Such status, conferred by the Adoption Act, actually improves the position of the child by providing a home, support, a family unit, and loving care that might otherwise not be present. (See Mills v. Atlantic City Department of Vital Statistics (1977), 148 N.J. 302, 308, 372 A2d 646, 649.) Further, the child inherits from the adopting parents. (Ill. Rev. Stat. 1977,

Ch. 110]/2, Par, 2-4.) We find that section 18 of the Adoption Act does not create sa suspect classification.

Inasmuch as a suspect classification is not involved, the State need only have a rational basis for the statutory classification. (San Antonio Independent School District v. Rodriguez (1973), 411 U.S. 1, 17, 36 L. Ed.2d 16, 33, 93 S. Ct. 1278, 1288; Illinois Housing Development Authority v. Van Meter (1980), 82 I11.2d 116, 120.) In this case, there is at least a rational basis between the statutory classification and a legitimate State purpose.

As discussed earlier, the legislature perceived a need for confidentiality. This confidentiality performs the socially and legally vital role of balancing the interest of the child, the interest of the natural parents, and the interest of the

adopting parents. The prohibition against seeing the records is not restricted to the adoptees. It applies equally to the adoptees, adopting parents, natural parents, and any curious third party who seeks to look at the record. Further, as stated earlier, the preclusion on viewing the records is not absolute. The court may, for good cause, order the records to be seen. Inasmuch as a rational relationship exists between the creation of the status of adoptee and the State's interest in promoting the adopting process, we find no unconstitutional infringement.

Plaintiff also argues that his constitutional right to receive information is violated by the Section. We disagree. Although the Constitution protects the right to receive information and ideas (Virginia State Board of Pharmacy v. Virginia Citi-

zens Consumer Council, Inc. (1976), 425 U.S. 748, 756-57, 48 L. Ed.2d 346, 355, 96 S. Ct. 1817, 1823), the first amendment does not guarantee a constitutional right of special access to information not available to the public generally. (Branzburg v. Hayes (1972), 408 U.S. 665, 684, 33 L. Ed.2d 626, 641, 92 S. Ct. 2646, 2658.) The information sought here is the product of the judicial process, gathered under the State's adoption laws. Control of records to support the highly desirable adoption scheme stands in contrast to the prevention of transfer of films (Erznoznik v. City of Jacksonville, (1975), 422 U.S. 205, 45 L. Ed. 2d 125, 95 S. Ct. 2268), ideas (Stanley v. Georgia (1969), 394 U.S. 557, 22 L. Ed. 2d 542, 89 S. Ct. 1243), and birth information (Griswold v. Connecticut (1965), 381 U.S. 479, 14 L. Ed.

2d 510, 85 S. Ct. 1678) in the cases cited by plaintiff. See Application of Maples (Mo. 1978), 563 S.W.2d 760, 762.

Just as we held that plaintiff's right to know his identity is not absolute, plaintiffs right to receive information cannot be considered at the exclusion of the right of the other concerned parties. (Alma Society, Inc. v. Mellon (2d Cir. 1979), 601 F2d 1225, 1233; Application of Maples (Mo. 1978), 563 S.W.2d 760, 762; Mills v. Atlantic City Department of Vital Statistics (1977), 148 N.J. Super, 302, 312-13, 372 A2d 646, 652.) As stated earlier, the Section does not totally deny plaintiff access to his birth records. It simply requires a court to determine that sufficient justification exists before releasing the information. This limitation, founded upon protecting the adoption pro-

cess, is not an unconstitutional exercise of State power.

In summary, we find Section 18 of the Adoption Act contains no equal protection violation of the Constitution resulting from un unwarranted infringement of a fundamental right or creation of a suspect classification. In addition, we find no constitutional violation of plaintiff's right to receive information.

In this case, plaintiff's attempt to have his adoption records released did not result from any physical or psychological medical need. It arose from plaintiff's desire to discover his natural identity. Further, the record does not show that the natural parents have ever waived their privacy right by consenting to divulgence of the information. We find that the trial court did not abuse its discretion

in concluding that plaintiff's desire to obtain release of the records should not prevail over the potential infringement of the rights of other parties. Accordingly, the judgment of the appellate court is affirmed.

Judgement affirmed.

MR. JUSTICE SIMON took no part in the consideration or decision of this case.

OPINION

OF THE

APPELLATE COURT OF ILLINOIS,

FIRST DISTRICT

IN THE MATTER OF	)	APPEAL FROM THE
	)	CIRCUIT COURT OF
ROGER B.,	)	COOK COUNTY.
	)	
Appellant.	)	HONORABLE JOSEPH
	)	SCHNEIDER, PRESIDING

Mr. JUSTICE McNAMARA delivered the opinion of the court:

Petitioner, Roger B., appeals from an order of the circuit court of Cook County dismissing his amended petition to open sealed birth and adoption records. He raises several constitutional questions concerning the validity of the Illinois statute which places adoption records and original birth documents under seal. (Ill. Rev. Stat. 1977, Ch. 40, Par. 1522.) The pertinent facts are as follows.

Four adoptees filed petitioners to review their sealed birth records. The trial court ruled that under the Illinois statute, an adoptee could view original

birth and adoption records only upon a showing of good cause. Petitioner filed an amended petition alleging that adulthood was of itself good cause and that the Illinois statutory scheme sealing adoption and original birth records from adult adoptees was unconstitutional. Neither side disputes the trial court's finding that good cause is required to release adoption and birth records to an adoptee.

At the hearing, petitioner testified that he has been searching for his biological family and was aware that his natural mother had inquired about hin approximately one year after his adoption. He did not believe that he would be rejected by his natural parents, and he would leave them alone if they did not wish to see him. Petitioner regarded himself as emotionally stable and financially comfortable. His

search was premised simply upon his desire to seek people realted to him by blood.

Petitioner's adoptive mother testified that she generally supported the petitioner and his search efforts. Petitioner's sister, also an adoptee, testified that her search for her biological family had been successful. She currently enjoyed relationships with both her natural and adopted families.

At the conclusion of the hearing, the trial court ruled that petitioner's adult status was insufficient to demonstrate good cause. Accordingly, the court denied petitioner's request.

On appeal, petitioner contends that the Illinois statute violates his right to receive important information and his right to privacy; that his due process rights were violated; that he was denied

equal protection of the laws; that the statute is violative of the Ninth Amendment; and that the trial court erred in not determining adulthood was of itself good cause to view original birth and adoption records.

Petitioner initially contends that the Illinois adoption statute violates his right to receive important information. While the Constitution protects the right to receive information and ideas, Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc. (1976), 425 U.S. 748; Kleindienst v. Mandel (1972), 408 U.S. 753, the First Amendment does not guarantee a constitutional right of special access to information not available to the public generally. (Branzburg v. Hayes (1972), 408 U.S. 665; Zemel v. Rusk (1965), 381 U.S. 1.) The

right to receive information presupposes a willing speaker. Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.

The right to receive information does not require the unwilling disclosure of nonpublic records simply because the adoptee desires its release. Nor can we consider the adoptee's right to receive information absolute to the exclusion of the rights of others affected by disclosure. (Alma Society, Inc. v. Mellon (1978), 459 F. Supp. 912; Mills v. Atlantic City Dept. (1977), 148 N.J. Super. 302, 372 A2d 646.) The information sought by petitioner is a product of the judicial process. (In re Maples (1978), 563 S.W. 2d 760.) The confidentiality of adoption records serves several purposes. By providing a statutory assurance of anony-

mity to the adoptee's natural parents, confidentiality encourages the surrender of children for adoption and serves to protect the natural parents from public disclosure of a traumatic emotional event and the possible intrusion into their private life by the reappearance of a child given up years before. (In re Adoption of Female Infant (1979), 5 Fam. L. Rep. 2311; In re Maples.) It also serves to protect the adoptive parent from interference by the natural parents in raising the child and facilitates the formation of an integrated family unit. (In re Christine (1979), 397 A2d 511; In re Spinks (1977), 32 N.C. App. 422, 232 S.E.2d 479.) The confidential nature of the adoption also functions to protect the adoptee from any stigma of illegitimacy and conflicts between natural and adoptive parents.

(Mills v. Atlantic City Dept.; In re Adoption of Female Infant; see also Ill. Rev. Stat. 1977, Ch. 40, Par. 1522.) The public interest in confidentiality is to preserve the integrity of the adoptive process and to provide the adoptive family with the same autonomous environment traditionally afforded other families. (Alma Society, Inc. v. Mellon; In re Christine.) The statutory provision for searled birth and adoption records is an obvious legislative attempt to consider the interests of all parties to the adoption proceeding. As such, we do not believe that the petitioner's right to receive information outweighs the different interests of the other parties involved. Moreover, the petitioner's right to receive information regarding his biological origins is not totally denied. Rather, it is conditioned

only upon a showing of good cause. This conditional limitation on the disclosure of adoption records is not unreasonable and is necessary to meaningfully balance the varying interests of the parties. We find that petitioner's right to receive information has not been unconstitutionally abridged.

Petitioner next contends that the Illinois statute violates his right to privacy. He asserts that the information regarding his ancestry is a family matter and should be free from government intrusion and restriction.

Although the Constitution does not expressly mention right of privacy, the Supreme Court has recognized that a constitutional right to privacy exists. (Carey v. Population Services Internat'l (1977), 431 U.S. 678; Griswold v. Conn.

(1965), 381 U.S. 479.) Several matters concerning the family have been constitutionally protected from unwarranted governmental intrusion, such as marriage, Loving v. Virginia (1967), 388 U.S. 1; procreation, Skinner v. Oklahoma (1942), 316 U.S. 353; contraception, Eisenstadt v. Baird (1972), 405 U.S. 438; abortion, Roe v. Wade (1973), 410 U.S. 113; child rearing, Wisconsin v. Yoder (1972), 406 U.S. 205; and family relationships, Prince v. Massachusetts (1944), 321 U.S. 158. Nevertheless, the constitutional guarantee of privacy protects only those personal rights which are fundamental or implicit in the concept of ordered liberty. (Roe v. Wade; Palko v. Connecticut (1937), 302 U.S. 319; Smith v. Shimp (1977), 562 F2d 423.) In the present case, petitioner has presented substantial evidence of the

psychological and social significance of hereditary information to the adoptee. Yet, the relative social or individual importance of the requested information is not determinative. Petitioner's interest in the biological information can be regarded as fundamental only if his asserted right to the information is explicitly or implicitly guaranteed by the Constitution. (San Antonio Indep. School Dist. v. Rodriguez (1973), 411 U.S. 1.) Petitioner's interest in the requested information, while socially and psychologically important, cannot be considered fundamental by definition. Having determined that petitioner's interest is not fundamental in the constitutional sense, an that the Illinois statute providing for sealed birth and adoption records serves many important interests in the adoption pro-

cess, we find that the statute does not violate petitioner's right to privacy.

Petitioner also contends that the Illinois statute violates due process. Freedom of personal choice in matters of family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment. (Smith v. Org. of Foster Families (1977), 431 U.S. 816.) Family interests, however, are not beyond regulation. (Moore v. East Cleveland (1977), 431 U.S. 494.) Due process is not an inflexible concept. (In re Stephenson (1977), 67 Ill.2d 544, 369 N.E.2d 1273.) In determinging whether the Illinois statute violates due process, the nature of petitioner's interest must be examined in conjunction with the importance of the other varying interests and the extent to which they are served by the challenged

statute. Moore v. East Cleveland; Bd. of Regents v. Roth (1972), 408 U.S. 564.

In the present case, petitioner's desire to learn the identity of his natural parents is not based upon medical necessity, psychological trauma, religious or moral concerns. Likewise, his wish is not asserted for any significant social or economic reasons. Indeed, by his own testimony, petitioner has stated that his desire is simply one of curiosity. Petitioner's request for disclosure may have significant impact upon the adoption process and on the other persons involved. The statute providing for confidentiality was designed, among other goals, to protect the interests of all persons involved in the adoptive process. Release of sealed adoption records, conditioned upon a showing of good cause, does no more than

protect these various interests. It places no undue burden upon the adoptee and does not arbitrarily impose upon or purposelessly restrain the adoptee's desire for genealogical information. Such regulation merely gives full recognition to an adoptive family unit already in existence and provides some protection for the natural parents and the adoptive process. We find no violation of due process.

Petitioner next contends that the Illinois statute violates his right to equal protection of the laws. He maintains that adoptees are discriminated against because only they must secure a court order to obtain birth records and that such a classification is inherently suspect. Suspect classes have been described as those which suffer from "an immutable characteristic determined solely by the

accident of birth." (Frontiero v. Richardson (1973), 411 U.S. 677, 686.) Traditional indications of suspect classes have been a history of purposeful unequal treatment and relegation to a position of political powerlessness. (San Antonio Indep. School Dist. v. Rodriguez.) Suspect classifications are subject to the strictest standard of judicial review. (Graham v. Richardson (1971), 403 U.S. 365.) On this basis, only race, McLaughlin v. Florida (1964), 379 U.S. 184; alienage, Graham v. Richardson; and national origin, Omaya v. California (1948), 332 U.S. 633, have been designated as suspect classifications. We do not believe that adoptees satisfy suspect criteria. It cannot be said that adoptees derive their status from any "accident of birth." The adoptee's status is derived from a legal

proceeding. (Mills v. Atlantic City Dept.) Adoptees have not been relegated to an inferior status; they are not politically disadvantaged or legislatively powerless.

Requirement of a court order to view original birth records does not subject adoptees to any invidious discrimination. Equal protection does not require that all persons be treated equally. (McGowan v. Maryland (1961), 366 U.S. 420; People v. Pembrock (1976), 62 Ill.2d 317, 342 N.E. 2d 28.) The Illinois statute is fairly and substantially related to a legitimate state interest. It places only a reasonable limitation on access to sealed adoption records. We find no violation of equal protection.

We find no merit in petitioner's next contention that the Illinois statute

violates his Ninth Amendment fundamental right to an identity. The question is not, as petitioner contends, whether an adult adoptee has the right to an identity, but rather, is whether an adult adoptee has a constitutionally protect right to know one's ancestors. We perceive no such right. It cannot be said that this asserted right is of such a character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions. (Powell v. Alabama (1932), 287 U.S. 45.) Nor does the restricted access to adoption records offend some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental. Speiser v. Randall (1958), 357 U.S. 513; Leland v. Oregon (1952), 343

U.S. 790.

Petitioner finally contends that the trial court erred in determining that adulthood was not of itself good cause to have access to the adoption records. He maintains that an adult is responsible enough to cope with receipt of such information and that any determination of good cause must be resolved in furtherance of the adoptee's welfare. We do not believe that any finding of good cause can be so simply determined.

Good cause requires an analysis of many factors, which will necessarily vary depending upon the facts of each case. Some of the factors are the need for the genealogical information, the nature of the petitioner's request, the age and maturity of the adoptee, the proposed use of the information, and any countervailing

considerations. In any event, a determination of good cause must reflect serious consideration of the interests of all persons involved.

In the present case, petitioner's request is not asserted for any special need. The trial court correctly dtermined that adulthood itself does not constitute good cause.

For the foregoing reasons, the judgment of the circuit court of Cook County dismissing the petition to open petitioner's sealed birth and adoption records is affirmed.

Judgment affirmed.

SIMON, J., concurs.

Mr. JUSTICE RIZZI, dissenting:

The petitioner is an adult adopted person who seeks to view his birth records. The records were sealed pursuant to a statutory scheme in effect at the time of his birth, and they remain sealed in accordance with the statutory provisions as they presently exist. Ill. Rev. Stat. 1977, Ch. 40, Par. 1522; Ch. 111-1/2, Pars. 73-17(2)(a), (4). The majority upholds the constitutionality of the statutory provisions as to adults. I respectfully dissent. In my opinion, the statutory provisions are unconstitutional and void as to adults.

To me, an adult's decision as to whether he wishes to know the identity of his genetic parents is a private and personal decision which he has a fundamental right to make for himself. In this regard, the

constitution, guarantees that fundamental rights, even those not explicitly mentioned in the constitution, shall be guaranteed. Griswold v. Connecticut, 381 U.S. 479, 482-85 (1965).

The fact that we are dealing here with a fundamental right is illustrated by the questions we all have about ourselves. What are the physical characteristics to which my children may be genetically prone? What is my ancestral nationality or religious persuasion? What sufferings and endurances are in my roots? What achievements or feats can I point to with ancestral pride? Can anyone seriously deny that one's liberty to pursue these and similar questions is "so rooted" in the traditions and conscience of our people "as to be ranked as fundamental"? See Griswold, 381 U.S. at 493 (Goldberg, J., concurring, quoting Snyder v. Massachusetts, 291 U.S. 97, 105 (1934)). Thus, the right to

know one's individually created identity must be considered a fundamental right. For those persons that are adopted, however, the only way that this fundamental right can be meaningful is to include within it one's liberty to know the identity of his genetic parents. In my opinion, this inclusion is demanded within the quintessential meaning of the fundamental right to know one's individually created identity.

Moreover, a comparison of this right with rights that have been held to be fundamental supports the conclusion that this is a fundamental right. Examples of rights which have been held to be fundamental include a woman's right to terminate her pregnancy*1, matters invol-

*1 Roe v. Wade, 410 U.S. 113 (1973).

ving procreation*[2], activities relating to marriage*[3], matters involving contraception*[4], matters of family relationships*[5], and child rearing and education*[6]. The common element which ties these protected rights together is that they involve a private choice about one's personal life to be made by each individual without governmental interference. An adult's right to decide whether he wants to know the identity of his genetic parents is a right that is part of the same strain and con-

*[2] Skinner v. Oklahoma, 316 U.S. 535 (1942).

*[3] Loving v. Virginia, 388 U.S. 1 (1967).

*[4] Eisenstadt v. Baird, 405 U.S. 438 (1972).

*[5] Prince v. Massachusetts, 321 U.S. 158 (1944).

*[6] Pierce v. Society of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923).

tains the same common element. In my opinion, it is likewise a fundamental right protected by the constitution.

Having concluded that this case involves a fundamental right protected by the constitution, there remains the inquiry as to whether the statutory provisions are justified by a compelling state interest and are narrowly drawn. Roe v. Wade, 410 U.S. 113, 155 (1973). In discussing the purpose of the statutory provisions, the majroity opinion states that by "providing a statutory assurance of anonymity to the adoptee's natural parents, confidentiality encourages the surrender of children for adoption and serves to protect the natural parents from public disclosure of a traumatic emotional event and the possible intrusion into their private life by the reappearance of a child

given up years before."

First, in my opinion, the claim that sealing the birth records of adopted adults "encourages the surrender of children for adoption" is untenable. In this regard, it is interesting to note that there has been no showing that sealing birth records of adult adopted persons encourages the surrender of children for adoption. As an example, the statutory provisions in this case were adopted in Illinois in 1961.*[7] Using the largest

*[7] Prior to 1945, there were no statutory provisions in Illinois for sealing the birth records of adopted persons. Between 1945 and 1961, birth records were sealed to all but the adult adopted person. Ill. Rev. Stat. 1959, Ch. 111-1/2, Par, 48 al. It was not until 1961 that the present statutory provisions, which preclude both minor and adult adopted persons from viewing their birth records, went into effect. Ill. Rev. Stat. 1961, Ch. 4, Par. 9.1-18; Ch. 111-1/2, Para. 73-17(2)(a),(4).

county in Illinois as a reference, there were 3,345 adoptings in Cook County in 1960, when adopted adults were able to view their birth records. In 1978, after the statutory provisions had been in effect for 17 years, there were only 2,089 adoptions in Cook County. Administrative Office of Illinois Annual Report to the Supreme Court (1960 and 1978).

Moreover, in order to be valid, the statutory provisions must be narrowly drawn to represent only the legitimate state interests at stake. Roe, 410 U.S. at 155; Doe v. Bolton, 410 U.S. 179, 211 (1973) (Douglas, J., concurring). The legitimate interest which the state has in adoptions is the welfare of the child. The state cannot claim a legitimate interest in encouraging women to give up their children for adoption. I think a state would

be on perilous ground if it actively encouraged women, for whatever reason, to divest themselves of their children so that the children may be adopted. Also, in view of the holding in Roe v. Wade, there is a serious constitutional question as to whether the state may effectively encourage adoptions prematurely, for then it may be violating itself too early in the private abortion vis-a-vis adoption decision of the pregnant woman.*[8]

Next, the maority opinion states that one of the purposes of the statutory provisions is "to protect the natural parents from public disclosure of a traumatic emotional event and the possible intrusion

*[8] In Roe, 410 U.S. at 163-64, the court held that the state may become involved in the abortion decision only after the first trimester.

into their private life by the reappearance of a child given up years before." I agree that protecting the genetic parents from public disclosure of a traumatic emotional event may be a concern of the state. But I cannot agree that it is a compelling state interest. Laws are not generally enacted to protect persons from the consequences of their own acts on their private lives. As an example, we do not have laws which seal annulment or divorce records, although the surfacing or disclosure of an annulment or divorce years after the event may prove devastating to new founded family relationships.*[9] Indeed, the

*[9] See e.g., Wolfe v. Wolfe, 76 Ill.2d 92, 389 N.E.2d 1143 (1979). In Wolfe, a marriage of over nine years was annulled as a result of the husband's discovery that his spouse had been previously married and divorced. The annulment was granted even though a child had been born during the marriage.

traumatic and emotional events of an annulment or divorce are often described in detail in published court opinions; yet, there does not seem to be a compelling state interest in sealing annulment or divorce records.

The majority opinion next states that the statute "serves to protect the adoptive parent from interference by the natural parents in raising the child and facilitates the formation of an integrated family unit." Of course, the parents of an adopted child should be protected from interference by the genetic parents in raising the child, and the child should be raised in an integrated family unit. But this proposition does not answer the question inolved here. The petitioner and others similarly situated are no longer children; they are adults. Admittedly,

the interests we are discussing are compelling while the adopted person is a child, but they cease to be compelling when he becomes an adult.

The majority opinion next states that the "confidential nature of the adoption also functions to protect the adoptee from any stigma of illegitimacy and conflicts between natural and adoptive parents." However, the argument apparently presupposes that all adopted children are illegitimate, which is obviously not true. This observation is relevant because an argument could be made that if an adopted person is permanently kept from being informed, he will naturally assume that he was illegitimate. Thus, the statutory provisions may actually <u>cause</u> people to maintain a "stigma of illegitimacy" rather than prevent the condition.

The majority opinion next states that the "public interest in confidentiality is to preserve the integrity of the adoptive process and to provide the adoptive family with the same autonomous environment traditionally afforded other families." However, the fact that several states and nations*[10] allow adult adopted persons to

*[10] Ala. Code Ann. Tit. 26 §26-10-4 (Supp. 1979); Kan. Stat. Ann. §65-2423(a) (Supp. 1979); Fla. Stat. Ann. §§282.22, 63.162 (West)(Supp. 1980); England, the Adoption Act. 1976, Section 51; Finnish Law, Pr. 30a, H10; Laws of State of Israel, Adoption of Children Law, 5720-1960, par. 27; Adoption (Scotland) Act 1978, ch. 28, par. 45 (5); Wales, The Adoption Act 1976, Section 51.

The Adoption Act 1976 was enacted by the English Parliament after receiving recommendations from a committee specially formed to research, hear evidence and study adoption problems. The committee filed its recommendations in 1976 under a report entitled Report

view their birth records, without any apparent ill effect, demonstrates that preventing adult adopted persons from viewing their birth records is not a prerequisite for either preserving the integrity of the adoptive process or for providing the adoptive family with the same autonomous environment traditionally afforded other families. This position is also supported

*[10] (cont.) of the Departmental Committee on the Adoption of Children. (Cmnd. 5107.) The Report states at page 85: "The weight of the evidence as a whole was in favour of freer access to background information, and this accords with our wish to encourage greater openness about adoption. We take the view that on reaching the age of majority an adopted person should not be denied access to his original birth records. We therefore recommend that all adopted adults in England and Wales, whenever adopted, should in future be permitted to obtain a copy of their original birth entry, and that in Scotland the age at which access to original birth records is permitted should similarly be 18, instead of 17 as at present."

by the proposed Model State Adoption Act*[11], which provides:

> The original certificate remains sealed to the adoptee until he attains majority, at which time he may inspect the original record which contains the names of his birth parents. 45 Fed. Reg. 33, 10639 (1980).

Accordingly, in my opinion, the "integrity of the adoptive process" and the "autonomous environment" arguments do not demonstrate compelling state interests for the statutory provisions involved here. Thus, the arguments are unavailing to deny the adult petitioner his fundamental right to view his birth record.

*[11] The proposed Model State Adoption Act was recently developed pursuant to Title II of the United States Code. The Act, for the first time, assembles the different statutes relating to adoption into a unified code which may be enacted in whole or in part by the states. 45 Fed. Reg. 33, 10624 (1980).

The majority opinion next states that the "statutory provision for sealed birth and adoption records is an obvious legislative attempt to consider the interests of all parties to the adoption proceeding." I disagree. Plainly, the statutory provisions disregard the interests of adopted adults.*[12] Rather, the statutory scheme

*[12] It is interestng to note that the statutory provisions effectively deprive adopted adults of possible inheritances. This is readily apparent when one considers the adoption does not cut off one's right to inherit from his genetic parents or from the estates of his other genetic relatives. In re Estate of Cregar, 30 Ill. App. 3d 798, 800, 333 N.E.2d 540, 542 (1975). How can adopted adults inherit from their genetic parents or genetic relatives if the law prohibits them from finding out their identity? The circumstances become virtually absurd when one considers 30, 40 and 50 year old adopted adults being denied their rightful inheritances because the law prevents them from knowing the persons from whom they are legally entitled to inherit. I accept the argument that there is a compelling state interest to effectively deprive them of their inheritance while they are minors, but I deny such a compelling state interest exists after they become adults.

primarily attempts to protect the interests of the other parties that are involved. But regardless of one's feelings about the validity of this proposition, the important point is that the answer is not determinative of the critical issue involved here. We are concerned with whether there is a compelling state interest to deny certain adults a fundamental right and not whether there is a showing that the statutory scheme has some rational relationship to the effectuation of a proper state purpose. Attempting to balance the interests of the parties may be a proper state purpose, but that would not be sufficient to permit the abridgment of the petitioner's fundamental personal liberties. In Griswold v. Connecticut, it is stated:

> In a long series of cases this Court has held that where fundamental personal liberties are in-

> volved, they may not be abridged by the States simply on a showing that a regulatory statute has some rational relatipnship to the effectuation of a proper state purpose. "Where there is a significan encroachment upon personal liberty, the State may prevail only upon showing a subordinating interests which is compelling," Bates v. Little Rock, 316 U.S. 516, 524. The law must be shown "necessary,. and not merely rationally related, to the accomplishment of a permissible state policy." McLaughlin v. Florida, 379 U.S. 184, 196. See Schneider v. Irvington, 308 U.S. 147, 161. 381 U.S. at 497 (Goldberg, J., concurring.

Thus, even if the legislature had done a perfect job of balancing the interests of all parties in the adoption process, the statutory provisions would nevertheless be unconstitutional unless a compelling state interest is shown. In my opinion, no discernable compelling state interest has been shown.

In reaching my conclusion, I recognize

that the state has an interest in protecting the welfare of children and in safeguarding them from matters which might prevent their growth into free and independent well-developed citizens. See Carey v. Population Services International, 431 U.S. 678, 706-07 (1977) (Powell, J., dissenting). But the petitioner and others similarly situated are no longer children; they are adults. The compelling state interest in protecting their welfare as children ceased when they became adults.*[13]

Accordingly, as to adults, the statutory provisions are not justified by any

*[13] The fact that a compelling state interest can commence or cease after a period of time is no longer debatable. In Roe v. Wade, 410 U.S. 113, 163-64 (1973), the Court held that the state has a compelling state interest in regulating abortions after the first trimester, but prior to that time, the state may not interfere in the decision.

compelling state interest. Therefore, they violate the adult petitioner's fundamental right to know the identify of his genetic parents. This fundamental right, like other fundamental rights not explicitly mentioned in the constitution, is a personal right "retained by the people" within the meaning of the Ninth Amendment.*[14] Thus, it is a fundamental right which is protected by the Fourteenth Amendment from infringement by the states. See Griswold, 381 U.S. at 499 (Goldberg, J., concurring). Consequently, I believe that the trial court erred in dismissing the amended petition to allow the adult petitioner to view his birth records. I would reverse

*[14] See Griswold, 381 U.S. at 482-85 and Doe v. Bolton, 410 U.S. 179, 209-13 (1973) (Douglas, J., concurring) for a discussion of fundamental rights that have been included within the penumbra of the Bill of Rights.

the dismissal and remand the case for further proceedings consistent with what is stated herein.

OPINION

OF THE

TRIAL COURT

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

IN THE MATTER OF B) 78 CO 307

MEMORANDUM OPINION AND ORDER

This cause comes before the Court on the petitioner's second amended petition for entry of an order permitting petitioner to view his original court and birth records or, in the alternative, for entry of an order declaring the Illinois statutes regarding confidentiality of such records unconstitutional (Ill. Rev. Stat. Ch. 40 §1522 (1977). Petitioner is an adult who believes that he was adopted as an infant in a proceeding in the Circuit Court of Cook County. He allges an emotional need for access to the information contained in the files in quest on, and maintains that this need is legally suf-

ficient to enable the Court to open the files and permit their inspection.

The initial petition and first amended petition were filed by the petitioner together with three other adult adoptees, each of whom stated their own individual reason for seeking access to their records. Following submission of briefs and oral arguments, this Court entered a memorandum opinion and order which rejected the constitutional challenge and dismissed the petition filed on behalf of the four petitioners. This Court also ordered that, in the event that any individual petitioner should chose not to utilize the informal procedure mentioned therein, that individual was to file a verified petition on his own behalf, as the present petitioner has done.

CONSTITUTIONAL ISSUE

In his second amended petition, petitioners has again urged this Court to declare the Illinois statutes regarding confidentiality of adoption records unconstitutional. This issue was fully discussed by this Court in the previous opinion in this cause and petitioner has advanced no further arguments or produced any additional authority in support of the arguments made previously. Since this court's opinion sustaining the constitutionality of the statute there has been a similar holding relating to the New York statute in the Federal Court. Alma Society, Inc. v. Mellon, 459 F.Supp. 921 (1978). This Court has reconsidered its previous holding and finds no reaso to alter that holding. Therefore, the previous holding of this Court that the Illinois statute is

constitutional shall stand as expressed in the previous opinion.

STATUTORY ISSUE

The only issue remaining before this Court is whether the Court should exercise its discretion and permit the petitioner to inspect his records pursuant to the Illinois statute. In order to decide this issue it is necessary first to determine what standards are applicable under the statute. Once the proper standards are defined, the Court can determine whether the petitioner has adduced sufficient evidence to warrant granting of the relief requested.

The Illinois statute which governs the impounding of adoption files states as follows:

> Upon motion of any party to an adoption proceeding the Court

> shall, or upon the Court's own motion, the Court may order that the file relating to such proceeding shall be impounded by the Clerk of the court and shall be opened for examination only upon specific order of the court, which order shall name the person or persons who are to be permitted to examine such file. Certified copies of all papers and documents contained in any file so impounded shall be made only on like order. Ill. Rev. Stat. Ch., §1522 (1977).

A companion statute, Ill. Rev. Stat. Ch. 111-1/2, §73-17(2)(a) (1977), provides that after the decree of adoption is entered:

> ....the original certificate and the evidence of adoption, paternity, legitimation, or sex change shall not be subject to inspection or certification except upon order of the Circuit Court or as provided by regulation.

Pursuant to this statute the Presiding Judge of the County Division of the Circuit Court of Cook County has entered a general order impounding all adoption files

upon entry of a final decree. The statute permits opening impounded files "upon specific order of the court", but is silent regarding the circumstances under which such an order is to be entered. However, since the legislature specifically provided that a court order is required to open impounded files, it is clear that the legislature intended that judicial discretion be utilized and that such files not be opened unless the court is satisfied that the rights of all interested parties are adequately protected and their best interests would be served thereby. While the statute does not expressly require a showing of "good cause" as do statutes in certain states (see, e.g., New York Dom. Rel. L§114), the court may in the exercise of sound judicial discretion require establishment of "good

cause" in order to ensure tht the legislature's concern for the rights of all parties be carried out. If the legislature had intended impounded files to be opened merely upon request, there would have been no necessity for judicial supervision. A purely administrative procedure would have sufficed.

The pivotal question which faces this court, then, is what constitutes "good cause" for opening impounded adoption files for inspection by an adult adoptee. It is clear that a determination that "good cause" has been shown depends upon the circumstances of each individual case. In Re Estate of Frick, 26 Ill. App.2d 56, 167 N.E.2d 266 (1960). It is also clear that a showing of "good cause" requires that the party charged with the burden of persuasion cross a certain threshold, e.g.

establish "some cogent reason, such as fraud, accident, mistake, or collusion, generally recognized as an equitable ground for setting aside an order." Chicago City Bank and Trust Co. v. Johnson, 293 Ill. App. 564, 571, 13 N.E.2d 191, 195 (1938). However, not any "cogent reason" is always sufficient. Where the rights of other parties are involved, a good reason for undertaking a particular action may not constitute "good cause" in a legal sense. Smith v. Ladage, 397 Ill. 336, 74 N.E.2d 497 (1947).

There are no Illinois decision which define "good cause" in relation to the opening of adoption records. However, other states have dealt with this issue and those decisions are helpful in this case. A number of cases have arisen under the New York statute (Dom. Rel. L. §114).

None of these decisions have permitted the examination of adoption files upon a bare showing of the petitioner's desire to know his background with no special considerations. Access to medical records and related matters has been granted with the deletion of the names of the birth parents and other non-pertinent information. The need for medical information to preduct possible genetic problems was held to be good cause for release of such information alone, but not for release of personal information regarding the birth parents. Chattman v. Bennett, 57 A.D.2d 618, 393 N.Y.S.2d 768 (1977).

This cases in which the adoption files were opened without limitations present factual situations distinguishable from the instant case and which are particularly illustrative. In Matter of Ann Carol S.,

Surrogate Court of Bronx Co., N.Y.L.J., August 13, 1974, P.12, Col. 6, the petitioner presented expert testimony which showed that the lack of knowledge regarding her birth parents had had a possible "adverse impact on (her) social adjustment". The court stated that "mere curiosity" was not good cause, but that the court would weigh the benefit to the petitioner against any possible adverse impact upon any other party. The file was opened in this case because so little information was contained therein no adverse impact was likely to occur.

The Queen's County, N.Y., Surrogate Court released information concerning the petitioner's birth parents after they had consented to its release, but only upon a further demonstration that the petitioner was suffering from a severe psychological

disorder and needed the information for his rehabilitation. In addition there was expert testimony that the petitioner was prepared to deal with any problems which might arise upon his obtaining the information. In Re Anonymous, N.Y.L.J. November 25, 1977, P. 16, Col. 3T.

An unpublished opinion by the Surrogate Court of Richmond County, N.Y., In The Matter of the Application of B. is perhaps even more closely related to the instant case. The petitioner is that case had originally sought access to her adoption records on the grounds that "it was her birthright to know the identity of her natural parents". Her original petition was denied but her subsequent motion to reopen the proceeding to offer additional proof was granted. Upon rehearing the petitioner produced expert testimony

that her "emotional health would be improved by the receipt of the information she sought to obtain from the sealed records". Upon this showing the court ordered the records opened.

Analysis of the cases cited above and of the facts of the present case indicates that the determination of "good cause" involves the balancing of three variables: 1) the type of information sought, 2) the reason for seeking the information, and 3) the risk of harm to other parties. In order to determine whether good cause has been shown it is necessary to determine these variables and balance them against each other. A showing of psychological need will not in all instances outweight the risk of possible harm to others. A showing that little or no risk is present may mean that less grave rea-

sons for seeking information may suffice. A request for only a limited amount of information may overcome virtually all objections. The need for this balancing process was recognized by the New Jersey Superior Court in Mills v. Atlantic City Department of Vital Statistics, 148 N.J. Super. 302, 372, A2d 646 (1977), which was cited in the Memorandum Opinion of September 13, 1978, at 6. The Mills Court stated that medical, hereditary, or ethnic background information should be made available on request, unless there was some compelling reason not to reveal the information. The Mills Court was convinced as a result of expert testimony and the testimony of adoptees that there are instances when the overwhelmin drive to know is such a compelling psychological need that under those circumstances it may constitute

good cause. Even in that situation the compelling psychological need must be balanced against the rights of the natural parents.

"Good cause" is not a static concept which is amenable to a precise and rigid definition. There is a fluidity inherent in the concept which must respond to the facts and circumstances in each individual case. "Good cause" represents the minimal showing necessary to induce the court to grant the relief requested, and that minimal showing is established in this case by balancing the three variables mentioned above.

THE EVIDENCE

Petitioner is seeking permission to examine all court records regarding his adoption and his original birth records. Thus he is seeking all information which

is within the jurisdiction of this court. He has testified that he desires a reunion with his birth parents, if they so desire, and that he will not be satisfied unless the denial of a reunion comes from his birth parents rather than the court.

As the reason for his seeking access to this information, Petitioner has testified to a very real feeling that the information is "information which pertains to me as a person". (Tr. at 22.) While he testified to an emotional need for the information sought, he denied that there was any psychological therapeutic need for this information. Thus, while it is certainly inaccurate to characterize petitioner's feelings as "simply" a desire to know, it is equally clear that the need for the information is not necessary for psychotherapeutic reasons to insure his

functioning as a normal, well-adjusted human being.

Balanced against the foregoing factual situation are the rights of other parties to the original adoption proceeding. Although the petitioner is now a legally emancipated person, the opinion of the adoptive parents should be a factor to be considered by the court in weighing all necessary and helpful eivdence. In this case the adoptive father is deceased and the adoptive mother testified to her consent to, and indeed support of, her son's efforts to learn about his birth parents.

The petitioner has made the decision that he wishes to know more about his biological heritage. In the initial memorandum opinion this court adopted the position that an adult should be given the dignity of making this decision. This position

is certainly applicable to this petitioner, who impressed the court as an intelligent and thoughtful person. He needs no protection from the court as to the unknown elements related to his request.

Finally this court must consider the rights of the birth parents, who are not before the court in this proceeding. To determine the identity and whereabouts of the birth parents and to ascertain their feelings regarding petitioner's request would require a search by, or under the direction of the court, based on the information in the file. The petitioner has not shown good cause to warrant the court's undertaking of such a search.

While petitioner has testified convincingly to his personal feelings regarding the missing information in his life, he has adduced no other evidence directly

relating to the issue of good cause. The witnesses who testified on his behalf spoke in general terms of the relative successes of other adult adoptees who have searched for their birth parents, but such general information, while certainly enlightening and informative to the court, has very limited relevance to the issue of good cause in this specific case. Petitioner's adoptive mother and sister testified with much compassion and empathy in support of petitioner's desire to learn of his biological heritage, but their testimony, while adding breadth and depth to the testimony of petitioner, did not demonstrate the good cause required.

In summary the petitioner has taken the position that an adult who had been adopted is entitled to examine the sealed court record and the sealed original birth

record. This position fails to traverse the minimal threshold required by the statute. Although the desire to know and the yearnings of the petitioner are respected by the court, they are not sufficient to overcome the statutory limitations.

Sound judicial discretion requires that the court balance the interests of all parties. Petitioner's desire to know this information, as expressed in the testimony herein, is simply inadequate when balanced against the potential infringement of the rights of other parties. Therefore, petitioner's petition to examine the court file and birth records pertaining to his adoption is denied and the petition is dismissed.

ENTER:

_____

Judge Joseph Schneider

Office-Supreme Court, U.S.
FILED
JUN 24 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-1992

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

IN RE ROGER BARTH,

Appellant,

v.

MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, Illinois,

Appellee.

On Appeal From The Supreme Court Of Illinois

MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT ON APPEAL

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QUESTIONS PRESENTED

1.) Does the challenged statutory scheme infringe upon any fundamental right of the appellant?

2.) Do the privacy rights of the natural parents overcome appellant's alleged constitutional rights to access to the information?

3.) Does the challenged statutory scheme create a suspect classification for equal protection considerations?

4.) Is there a rational basis for the challenged statutory scheme?

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In The

Supreme Court of the United States

October Term, 1980

IN RE ROGER BARTH,

Appellant,

v.

MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, Illinois,

Appellee.

On Appeal From The Supreme Court Of Illinois

MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT ON APPEAL

STATEMENT OF THE CASE

The Appellant, an adult adoptee, filed a petition in the Circuit Court of Cook County, Illinois seeking to have the Court order the Clerk to open to him the sealed records of the petitioner's adoption. The trial court denied relief (App. 65) and the Illinois Appellate Court affirmed the trial court decision. The Illinois Supreme Court again affirmed the decision on March 18, 1981 (App. 1). The courts all concluded that the adoption records could be opened for "good cause" but that simply achieving adulthood does not constitute such a good cause.

MOTION TO DISMISS OR AFFIRM

The appellee hereby moves to dismiss the appeal on the ground that it does not present a substantial federal question, and that the judgment rests upon an adequate non-federal ground. In the alternative, appellee moves to affirm on the ground that the questions presented are so insubstantial as not to need further argument.

The appellant takes the position that his adulthood constitutes sufficient "good cause" to support the opening of his sealed adoption records. He further asserts that if it is not deemed good cause then the statutes in question are unconstitutional. He makes little effort in his brief to deal with the competing rights of the other parties to the adoptive process. His position is that his rights are paramount to those of all others. The Clerk of the Circuit Court of Cook County, Morgan M. Finley, is the keeper of the records in question. He has attempted to fairly raise the competing concerns which must be evaluated before a court can make a considered judgment.

Two of the appellant's arguments are that other states/countries permit adult adoptees to view their birth records and that many sociologists think that having open records is the better practice. These arguments miss the mark as they are made to the wrong audience. Only the Illinois General Assembly has the right to weigh the sociological arguments and change state policy. Thus, there is an adequate state basis upon which the decision rests, that is, that the legislature exercised its judgment to maintain confidentiality instead of allowing the records to be open. The appellant argues that since some other countries and three states allow the records to remain open, Illinois could have

elected to have done so and it would be the more enlightened practice. However, establishment of such a state policy is intrinsically an independent, non-federal basis for the law and the Illinois Supreme Court accepted that policy as an appropriate justification (App. 9).

I.

THE CHALLENGED STATUTORY SCHEME DOES NOT INFRINGE UPON APPELLANT'S FUNDAMENTAL RIGHTS.

Appellant claims that the denial of access to the sealed judicial records of his adoption impairs his fundamental rights. Yet nowhere in his brief are those rights ever clearly defined. An adoptee's desire to learn about his genetic parents is understandable, but his curiosity, absent medical, psychiatric or other necessity, cannot override the very substantial rights of other parties to the adoption and the necessity to protect the integrity of the adoptive process itself.

While the First Amendment protects the right to receive information and ideas, *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976), the access to such information is not absolute but subject to restrictions commensurate with its nature, *Pell v. Procunier*, 417 U.S. 817, 832 (1974); CF. *Kleindienst v. Mandel*, 408 U.S. 753, 752-63 (1972). In order to receive the Court's protection the passing of information from one person to another must be concerned with the marketplace of ideas, *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 390 (1969), or with securing long recognized constitutional rights.

In support of his claim, the appellant has cited cases in which the interchange of ideas and materials was

insured only because of correlative constitutional claims. In *Stanley v. Georgia*, 394 U.S. 557 (1969), the Court viewed the right to receive information in the context of freedom of speech and press, but that right to receive information was coupled with the accepted fundamental right to privacy. The court protected the private possession of obscene matter.

Marital privacy, coupled with the freedom of speech within the "spectrum of available knowledge," provided the Court's protection to a married couple's access to birth control information and devices in *Griswald v. Connecticut*, 381 U.S. 479 (1965). In *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975), censorship of films containing mere nudity was struck down because its overbroad application proscribed freedom of speech and expression. Freedom of the press, coupled with the right to access to social, political, moral and other ideas protected the right to express an opposing viewpoint in radio broadcasts in *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367 (1969).

A reading of the cases presented by appellant in support of his contention that there is a fundamental right to information clearly supports only the proposition that the courts will try to afford the free flow of ideas and information in furtherance of some other fundamental right.

The United States Court of Appeals for the Second Circuit addressed the same claim as is presented in the case at bar in *Alma Society, Inc. v. Mellon*, 601 F.2d 1225 (2nd Cir. 1979) *cert. denied* 100 S.Ct. 531. That Court deemed the fact that other people's interests were involved was an important factor in evaluating the statute:

> ". . . a state may take into account the relationship of the adopting parents, even if, as appellants

> assert, many of them would not object to or would even encourage the adopted child's seeking out the identity of or relationship with a natural parent. The New York statutes in providing for release of the information on a 'showing of good cause' do no more than to take these other relationships into account. As such they do not unconstitutionally infringe upon or arbitrarily remove appellants' rights of identity, privacy, or personhood." (at 1233)

After considering the competing rights of the natural and adoptive parents, there was little left to support appellant's claim.

> "We could readily take a 'pigeon-hole' approach and in doing so, because appellants' novel claims do not fit into any as yet recognized category of 'privacy,' exclude them. For example, there is not involved a general 'individual interest in avoiding disclosure of personal matters,' *Whalen v. Roe*, 429 U.S. 589, 599, 97 S.Ct. 869, 876, 51 L.Ed.2d 64 (1977). Although it could be argued that appellants do have an 'interest in independence in making certain kinds of important decisions,' *id.* at 599-600, 97 S.Ct. at 876 that categorization still would leave the question whether in a situation involving both natural parents and adoptive parents the adult adoptee should have 'independence' in determining whether he or she shall obtain knowledge of the natural parents."

The Court concluded that there was no fundamental right involved.

In order to receive First Amendment protection, the sought after information must be ideas and materials already within the public stream. For example, appellant cites *Cox Broadcasting v. Cohn*, 421 U.S. 469 (1975), where the Court allowed the name of a rape victim to be published in a local newspaper. However, that information was already available to the public through unsealed court records, unlike the sealed records of

adoption information. In *Cox*, the court pointedly relied on the existing public nature of the records in allowing its publication:

> "By placing the information in the public domain in official records, the State must be presumed to have concluded that the public interest was thereby being served . . . In preserving that form of government the First and Fourteenth Amendments command nothing less than that the State may not impose sanctions on the publication of truthful information contained in official court records open to public inspection." 420 U.S. 469, 495 (1975).

An application for access to confidential information must be tempered by the purpose of the First Amendment, *viz*, the dissemination of ideas and information of public interest, *Bigelow v. Virginia*, 421 U.S. 809, 95 S.Ct. 2222 (1975). The right of access to judicial records has never been considered absolute and courts have always exercised the power to seal their records when deemed necessary. The Court records to which appellant seeks access are gathered under a scheme of adoption laws, and are a product of the judicial process. In the exercise of a valid state interest in protecting the rights of all the parties involved, the records are sealed to all. The First Amendment does not guarantee a Constitutional right of special access to information not available to the public generally, *Branzburg v. Hayes*, 408 U.S. 665 (1972), *Zemel v. Rusk*, 381 U.S. 665 (1972). There is no decided case which even hints that the First Amendment is a constitutional "freedom of information act." In fact, the case law resoundingly refutes that suggestion.

II.

THE PRIVACY RIGHTS OF THE NATURAL PARENTS AT LEAST EQUAL IF NOT OVERCOME THE PETITIONER'S RIGHT TO KNOW.

Any right to know must be balanced with the right to privacy and the right to privacy is the weightier of the two claims. Although the Constitution does not explicitly mention any right of privacy, the Court has recognized that one aspect of the liberty protected by the Fourteenth Amendment is a right of personal privacy, *Carey v. Population Services*, 431 U.S. 678 (1977), *Roe v. Wade*, 410 U.S. 113 (1973). The decision of whether or not to bear a child is an example of the kind of concern constitutionally entitled to the right of privacy, *Carey v. Population Services, supra*; *Roe v. Wade, supra*; *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976). This privacy right extends to an individual's liberty to make choices as they regard contraception and child-bearing, *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

Just as the Court protects the freedom of choice and privacy with respect to child bearing in terms of abortion, they must also protect the freedom of choice and privacy in terms of adoption. In an adoption, the natural parents sever all present and future rights and interests in the child; Ill. Rev. Stat. 1977, ch. 40, §1521; *In Re Cech*, 8 Ill. App. 3d 642, 291 N.E.2d 21 (1972); *In Re Petition of Jollay*, 22 Ill. App. 3d 151, 319 N.E.2d 287 (1974). Today natural parents surrender their child for adoption with not merely an expectation of confidentiality, but with an actual statutory promise that their identity as the child's natural parents will be kept sealed, Ill. Rev. Stat. 1977, ch. 40, §1522. "Thus, the natural parent has a right to privacy, a right to be let alone that is not only expressly assured (by statute) but also has been recognized as a vital interest by the United States Supreme Court, *Stanley v. Georgia*, 394 U.S. 557 (1969),"

The Alma Society, Inc. v. Mellon, 459 F. Supp. 912 (D.C. N.Y. 1978).

This "right to be left alone" has been recognized by the Supreme Court as the keystone to all other freedoms. Justice Douglas described its importance in *Public Utilities Comm'n. v. Pollak*, 343 U.S. 451 (1952).

> "Liberty in the constitutional sense must . . . include . . . privacy . . . The right to be left alone is indeed the beginning of all freedom."

Hence, the natural parents have both a statutory and a constitutional right to be left alone.

The appellant, in essence, seeks to exercise the protective shield of privacy as a sword. Here he seeks to initiate the flow of information rather than limit the flow. The information concerns not simply a detail of his individuality, but the details of the individuality of his natural parents. Privacy rights protect the adoptive parents as well as those adoptees who wish to curb the flow of information concerning the details of their individuality.

While appellant acknowledges a compelling reason to prevent access to the adoption records while he was a minor, he claims that all such interests abate once he becomes an adult. While the attainment of majority is a significant event in the adoptee's life, it occurs independently of either the natural family relationship or the adoptive one and does not affect either the termination or the continuation of those relationships. Those parents' expectations do not end nor does their legal status change because the adoptee becomes an adult. The rights of the adoptee must always be viewed together with the rights of the natural and adoptive parents. The integrity of the adoptive process is built upon the assurance of confidentiality to all parties. Surely the natural parents do not waive their privacy rights by giving up their child for adoption.

The legislature has determined that the goal of encouraging the supply of adoptive parents, providing permanence to the adoptee's life, and preventing interference by either set of parents is best attained by finality to the adoptive process, that is, closing the files. The wisdom of that determination is not before this Court.

In light of the fact that parental rights are not only surrendered voluntarily but sometimes severed by the Court because of neglect or abandonment, it is critical to safeguard against casual disclosures. Upon the entry of an order of adoption sealing the court file, the natural parents no longer have a legal parent-child relationship. They do, however, have a vested expectation of privacy and anonymity. Permitting the adoptee to intrude upon that privacy without even notice to natural parents violates their due process rights. Barring good cause, the legislature has determined that those records should be sealed forever. Appellant is hard pressed to prove that his curiosity, without more, justifies the potentially traumatic result from the sudden reappearance of a child given up for adoption so many years before.

The appellant attempts to minimize the privacy rights of his natural and adoptive parents by stating that his adoptive mother supports his search for his natural parents (Brief, p. 25) and that his natural mother is said to have inquired into his well-being a year after birth (Brief, p. 9). Both of these casual observations demand further scrutiny.

The adoptive mother is asked by the appellant whether or not she supports his search for his natural parents. She does not relish the prospect of him finding them for fear that his affections for her will be diluted or diminished. Yet she dare not say no. If she appears to resist his search he will resent her for that with the natural

consequence of increased disaffection between the two. She reluctantly agrees. Is her concurrence freely given?

The appellant also recites the hearsay statement that his adoptive mother told him that his natural mother inquired about him approximately a year after the adoption. Assuming that this is true, the implication that she therefore wants to have a reunion with him is wholly unwarranted. If she were sixteen years old and unmarried then, she would be close to fifty years old now and probably married with an extended family. It would take an enormous leap of faith to conclude that she would want him to unexpectedly appear at her front door tomorrow. The impact on her personally and her marriage and family could range from surprise to personal catastrophy. We cannot ignore the privacy concerns of the natural parents.

III.

APPELLANT'S STATUS AS AN ADOPTEE DOES NOT PLACE HIM WITHIN A SUSPECT CLASSIFICATION.

Appellant contends that "strict scrutiny" of the Illinois adoption statute be applied when determining its constitutionality for the reason that the statute places adoptees within a "suspect" classification. He suggests that adoptees are discriminated against because only they must secure a court order to obtain birth records and that such a classification is inherently suspect. However, adoption is not a "status at birth" classification. The adoptee's status is derived from a legal proceeding, with concomitant regulations regarding that status, *Mills v. Atlantic City Dept., supra.*

Appellant relies upon Supreme Court decisions which have examined classifications based on race, national origin, sex and illegitimacy. However, only two classifi-

cations have been designated as suspect: race, *Loving v. Virginia*, 388 U.S. 1 (1967), and alienage, *Graham v. Richardson*, 403 U.S. 365 (1971). Developing decisions have added a middle tier of scrutiny. In *Kahn v. Shevin*, 416 U.S. 351 (1974), the Court distinguished its decision in *Frontiero v. Richardson*, 416 U.S. 677 (1973), and has applied a "fair and substantial" test to classifications based on sex and illegitimacy. *See, Schlesinger v. Ballard*, 419 U.S. 498 (1975) and also *In re Estate of Karas*, 61 Ill. 2d 40, 329 N.E.2d 234 (1975).

Adoptees would nonetheless fall into a minimal scrutiny analysis as they suffer none of the earmarks of these systematically deprived classes: 1) Stigmatized as inferior; 2) discrete and insular minorities; 3) socially and legislatively powerless, politically disadvantaged; 4) accident of birth (despite appellant's post-birth arguments); or 5) that laws have been used in the past to discriminate, *Graham v. Richardson, supra*; *Mathews v. Lucas*, 427 U.S. 495 (1976). The classification of adopted children thus lacks the traditional indicia of being suspect. Further the class of adoptees are not disadvantaged by an accident of birth but their status is created by statutory authority in order to obtain special benefits, that is, to become the legal child of another. The adoptee thus obtains new rights of support, care, protection and inheritance. Through this process the adopted child becomes entitled to the same rights and privileges as other children. The scheme also provides the adoptive family with the same autonomous environment traditionally afforded other families.

Adopted children are not relegated to a position of political powerlessness requiring extraordinary protection from the majoritarian political process, *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973). The adoptee group may contain among them racial minorities and illegitimate children but that in

and of itself does not make adoptees a suspect classification; and in the case of illegitimates, the equality of treatment among their peers is insured by sealing their adoption records, and thus any knowledge by outsiders of the circumstances surrounding their birth is prevented. Additionally, adopted children are not marked with immutable characteristics which by their very existence have been the basis of unfair treatment.

The requirement of a Court Order to view original birth records does not subject adoptees to invidious discrimination. Equal protection does not require that all persons be treated equally. *McGowan v. Maryland*, 366 U.S. 420 (1961). The Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways, it only prohibits different treatment on the "basis of criteria wholly unrelated to the objective of that statute," *Eisenstadt v. Baird*, 405 U.S. 438, 447, 92 S.Ct. 1029, 1035 (1972).

> "The classification must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike," *Royal Guano Co. v. Virginia*, 253 U.S. 412, 415, 40 S.Ct. 560, 64 L.Ed. 989 (1920).

The alleged social desirability of an adoptee ascertaining his natural lineage is not the critical determinant for subjecting state legislation to strict scrutiny. The key to discovering whether the interests of an adult adoptee in determining his natural identity are entitled to constitutional protection lies in assessing whether there is such a right explicitly or implicitly guaranteed by the Constitution, *see, Dandridge v. Williams*, 397 U.S. 471 (1970). Virtually every statute affects important rights, *Shapiro v. Thompson*, 394 U.S. 618 (1969). Adoptees simply are not members of a suspect classification and the statutory scheme in question must only

be rationally related to the purpose intended for it to pass constitutional muster. Not one of the many cases cited by appellant establishes his inclusion in a suspect class.

IV.

A RATIONAL BASIS EXISTS FOR THE STATUTORY SCHEME IN QUESTION.

"The State has more than a rational basis, it has a compelling interest in regulating the access sought here," *Mills v. Atlantic City Dept. of Vital Statistics, supra*, p. 653. The Illinois laws have been designed to balance the rights of all the differing interest groups. The statute merely sets up a hearing procedure whereby all the competing rights can be evaluated. The statute does not deny all access to information, it requires that one must demonstrate good cause to gain access in order to protect the conflicting privacy rights of the others involved. Such a limitation is within the rational state policy of protecting the privacy rights of its citizens and non-citizens alike who enter its courts, and seek its protection. The scheme places only a reasonable limitation on access to sealed adoption records.

Appellant cites numerous articles purporting to show how adversely the adoption process affects children handled within its systems. However, generations of Illinois youths have found homes and new beginnings through the adoption courts. Natural parents have been encouraged to participate through the guarantee of anonymity. Adopting parents have been assured that their place as parents will be protected from reconsidering, regretful, or even vengeful natural parents. The children themselves have been guaranteed a fresh opportunity by sealing forever the accidents, or regretted beginnings of their life. Indeed, some children may suffer

serious adverse effects from the facts underlying their adoption.

Some adoptees may need to know medical or psychological facts about their parents. The statute provides a means for them to know. The statutory provision vests in the court the power to weigh and balance the competing privacy rights and make a determination based on the facts and circumstances of each individual case.

The fact that some reunions with natural parents have been successful, does not diminish the reality that other meetings, forced or unexpected as they may be, have had a damaging and irreparable effect on the adoptee, natural parents and adoptive parents alike. Each story, successful or heartbreaking, reflects in its individuality the necessity to retain a case by case approach. The state's interest is fourfold: protection of the adoptive child, the natural parents, the adopting parents and the adoptive process. Making adoption records confidential except upon a showing of good cause represents a thoughful balance between many competing interests.

In *Application of Sage*, 586 P. 2d 1201 (Wash. 1978), the Court of Appeals of Washington upheld an adoption statute similar to the one here. In so holding, the Court found persuasive the argument set out in *Genealogical Information in Adoption: The Adoptee's Quest and the Law*, 11 Family Law Quarterly 185, 196 (1977):

> "The primary interest of the public is to preserve the integrity of the adoptive process. That is, the continued existence of adoption as a humane solution to the serious social problem of children who are or may become unwanted, abused or neglected. In order to maintain it, the public has an interest in assuring that changes in the law, policy or practice will not be made which negatively affect the supply of capable adoptive parents or the willingness of

> biological parents to make decisions which are best for them and their children. We should not increase the risk of neglect to any child, nor should we force the parents to resort to the black market in order to surrender children they can't care for."

The Supreme Court of Missouri in *Application of Maples*, 563 S.W. 2d 760 (1978) sustained a similar adoption statute finding that "the primary concern of the state must be to protect and foster an efficient scheme for adoption, thus serving the best interest of the child." 563 S.W. 2d at 763.

The Illinois General Assembly weighed and considered the variables and possibilities. It made a reasoned choice in how best to deal with an intractable problem. It made policy determinations. All of those functions are uniquely legislative. The appellant encourages this Court to reevaluate our current adoption process. Such a reevaluation might be a good idea, but this Court is not the vehicle with which to do it. Only the Illinois General Assembly may reconsider our state enunciated policies concerning adoption. Appellant's call for this Court to act beyond its authority must fall on deaf ears.

CONCLUSION

No court has yet held that adoptive persons have a constitutional right to inspect their court files simply upon reaching majority. By urging this type of *ex parte* proceeding they must acknowledge that the natural parents would also have an unfettered right to search them out. The consequences of such a policy could be disastrous in many instances. Unhappy adoptees could seek out

and publicly revile their natural parents for having abandoned them. Guileful natural parents could track down their long forgotten child and seek to have him support them at the expense of such care to the adopting parents.

The potential abuses of such information are beyond the scope of appellee's imagination. *Some* good cause must be shown by the child (or the natural parent) for the court to take the risks inherent in opening the court files. Doing so on an *ex parte* petition violates anyone's concept of fair play. This Court must not tinker with so volatile a situation. This is particularly so when it is best dealt with in a legislative fashion.

The appellant has failed to demonstrate any unconstitutional treatment afforded him by the state. Consequently, the Illinois Supreme Court's decision must be affirmed.

Respectfully submitted,

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